

# RUTGERS-CAMDEN BANKRUPTCY PRO BONO PROJECT



## CHAPTER 7 TRAINING MANUAL

2011-2012

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## Preface

This training manual was created to assist law students and volunteer attorneys associated with the Bankruptcy Pro Bono Project at the State University at Rutgers, School of Law - Camden. It is designed to be used as a reference guide for basic Chapter 7 pro bono case preparation. The manual includes general information, definitions and explanations, tables, charts and check lists, copies of a Chapter 7 petition and its related schedules, sample forms, answers to commonly asked questions, and an overall walk-through of the Chapter 7 process compiled from various resources. It is written primarily with law students in mind, but also includes information useful for a beginning practitioner.

The manual begins with a description of the Rutgers Bankruptcy Pro Bono Project, and an overview of the Chapter 7 process. It includes a discussion of the attitude, techniques, and information you should bring to the initial client interview, and the topics and questions that should be discussed with the client. Questions and issues that may arise along the way are briefly discussed, such as the local filing requirements and filing fees, what to expect at the 341(a) meeting, the use of exemptions, the impact of the automatic stay, nondischargeable debts, and reaffirmation and redemption. This manual is not intended as a substitute for a substantive course in bankruptcy or as a replacement for an attorney's responsibility to research questions of law, but only to serve as a basic reference guide for pro bono representation through the Project.

Classroom training will be provided to expand upon the information provided in this manual. The training will outline the basic Chapter 7 process as explained by a panel of respected bankruptcy practitioners, including judges from the United States Bankruptcy Court for the District of New Jersey, attorneys from South Jersey Legal Services, members of the Camden, Burlington and Gloucester County Bar Associations, and practicing Chapter 7 Trustees. Students will be given an opportunity to observe a mock interview and to prepare a practice petition.

This is the fourteenth revision of this manual, as updated in August 2011. This revision incorporates the provisions of the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005. Questions and/or suggestions regarding the materials included in this manual should be directed to:

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## I. Introduction

### **What is the Rutgers Bankruptcy Pro Bono Project?**

The Rutgers Bankruptcy Pro Bono Project first began operations during the fall of 1993. The Project was created in response to concerns raised by Judge Judith H. Wizmur and Judge William Gindin of the United States Bankruptcy Court for the District of New Jersey regarding the availability of adequate representation to indigent and other pro se filers. Since its inception, the Project has interviewed 1,971 clients. Over the last two school semesters alone, the Project has accepted 111 out of 112 prospective clients.

The primary purpose of the Project is to expand the referral services available to South Jersey Legal Services (“SJLS”) for bankruptcy cases by establishing a pro bono program at the law school staffed by second and third year students and volunteer attorneys. The Project brings together various segments of the legal community, including Legal Services, the law school, the federal bankruptcy court, the local bar associations, volunteer students and attorneys. The Project provides not only an important community service, but also helps to increase the interaction between the law students and the local attorneys while expanding the learning experience for the students and providing expanded pro bono opportunities for the attorneys.

### **Who are the clients?**

The Project’s clients are referred primarily through SJLS, which serves 7 counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem counties, where the applicants are screened for income and asset eligibility. The program also occasionally receives referrals from the Camden Center for Law and Social Justice, the Community Health Law Project, and the Aids Coalition of Southern New Jersey. In order to be referred to the

Bankruptcy Pro Bono Project, prospective clients must satisfy the Legal Services income eligibility guidelines, unless expanded levels are accepted by the Project. The income eligibility level for Legal Services is set at 150% of the Federal Poverty Guidelines. A table illustrating the applicable income levels and a brief discussion of the SJLS guidelines are included in the Appendix at page 3. Federal poverty guidelines are updated annually by the Department of Health & Human Services. (The 2011 guidelines can be found at 76 FR 3637-02, 2011 WL 167132 ). Clients seeking bankruptcy assistance and satisfying the SJLS guidelines are sent a letter referring their case to the Project. The prospective clients are then scheduled for an interview with a volunteer team from the law school, comprised of a volunteer attorney and two law students, typically one second year and one third year law student. This “team” will handle the prospective client’s case.

**What is the student's role?**

Rutgers coordinates scheduling the volunteer attorneys, the prospective clients, and the second and third year law student volunteers. The law students are solicited for participation in the program at the beginning of the fall semester. Generally, a second year and third year student are paired together with a volunteer attorney to form a team for each interview. Often the third year student will have been a volunteer in the Project the preceding year, and will then act as the lead for the team. It is recommended that the students meet with the attorney assigned for their night, or with the Supervising Attorney, in person or by telephone prior to the interview to discuss any procedural questions the students might have. It is expected that the students will conduct the interview and prepare the petition and schedules when required. A Supervising Attorney for the Project is also available as an additional source of feedback, guidance and supervision, as needed, for both the students and the attorneys.

The students' participation does not end with the interview and the preparation of the petition and schedules. It continues at least through the section 341(a) First Meeting of Creditors, and commonly for any other court hearings which occur during the fall or spring semesters. Third year students may appear with the clients at the 341(a) meeting, supervised by the team's volunteer attorney, in conformance with Local Civil Rule 101.1(h) of the United States District Court for the District of New Jersey.

While the students will be conducting the interview and preparing any necessary paperwork, the volunteer attorney is ultimately responsible as the attorney of record for all cases undertaken by the Project. The attorney is also responsible for the administrative processing of the case, although this too can be done by the students with the appropriate supervision.

If the team decides that a bankruptcy petition should be filed, the necessary legal services will be provided by the team on a pro bono basis. These services do not include payment of the petition filing fees. All fees and costs are the responsibility of the client. The various filing fees currently in effect for the United States Bankruptcy Court for the District of New Jersey are included in the Appendix at page 5. The client may seek to pay the filing fee in installments or request to have his/her filing fees waived under the *in forma pauperis* provisions included by BAPCPA.

To ensure the success of the Project, the team must be familiar with the basic Chapter 7 process and be able to effectively interview and examine the client and his/her financial condition. The following section provides an overview of the Chapter 7 process.

## II. Understanding Chapter 7

Most bankruptcy petitions are filed under Chapter 7 of the Bankruptcy Code. They are sometimes referred to as “straight” bankruptcies, or liquidating bankruptcies. In most Chapter 7 cases, the debtor does not own any real property, has mostly unsecured debt, and wishes to simply and inexpensively free themselves of debt and obtain a “fresh start”. The Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 (“BAPCPA”) made several important changes to the Chapter 7 process, and those new provisions will be incorporated in the presentation below.

### Credit Counseling

Prior to filing a petition under the Bankruptcy Code, debtors are required to complete a credit counseling session with an approved nonprofit budget and credit counseling agency. 11 U.S.C. § 109(h). The expected cost of this service is \$50.00 or less, and it must be provided “without regard to ability to pay the fee.” 11 U.S.C. § 111(c)(2)(B). It is expected that most of the Project’s clients will not be required to pay a fee for the credit counseling service. The counseling session must occur within the 180 days preceding the date of the filing of the petition, and lasts on average 90 minutes. It may be conducted by telephone or on the internet, as specifically approved by the United States Trustee’s office for that counseling agency. Certain exigent circumstances may constitute a waiver of this requirement as approved by the bankruptcy court. To obtain a waiver from the credit counseling requirement, the debtor must submit a certification to the court that: “(i) describes exigent circumstances that merit a waiver of the requirement[] . . . ; (ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services . . . during the 7-day period beginning on the date on which the debtor made the request; and (iii) is satisfactory to the court.” 11 U.S.C. § 109(h)(3). The requirement may also be excused if the court determines that the debtor is unable to complete the counseling due to incapacity, disability or active military service. The waiver expires after the debtor meets the requirements to obtain such counseling or 30 days after the date of the bankruptcy filing, whichever occurs sooner. The court for cause may extend the time period an additional 15 days.

For a list of approved credit counselors as of July 15, 2011, see the Appendix at page 6, or check the list posted on the United States Trustee’s website at: [www.justice.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm). Upon completion of the counseling requirement, the debtor must then include with his/her schedules a certificate of having received such counseling. 11 U.S.C. § 521(b).

## **Initial Preparation**

To prepare for the initial interview, the client will need to compile certain identification, information, and other documents. The Project will send the client a letter detailing the documents to bring to the client interview. See Sample Letter in the Appendix at page 105. The client should bring the following information to the initial meeting with the team:

- a picture ID, evidence of social security number (or written statement that one doesn't exist);
- a copy of the credit counseling certificate (if completed prior to interview, if not must be obtained prior to filing);
- copies of most recent tax returns (last 2 years is preferred);
- copy of at least one credit report (helpful but not mandatory);
- the source and amount of the debtor's income, including copies of all pay stubs for the past 60 days;
- copies of all banking statements (checking, savings, money market, etc.);
- a list of all of the debtor's property, real and personal (bring copies of mortgages, deeds or leases),
- an itemized list of the debtor's monthly living expenses, including: mortgage or rental payments, food, clothing, utilities, insurances, taxes, transportation, and recreation, etc.
- a list of all outstanding debts, whether delinquent or not, including the names and addresses of the creditors.

See FED.R.BANKR.P. 1007, 4002(b). This information will help the team to understand what assistance the client will require.

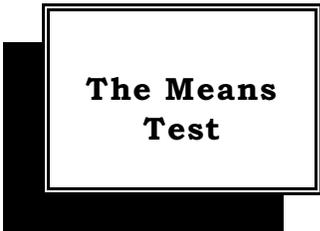
## **Filing the Petition**

If the team determines that a bankruptcy case should be filed, the Chapter 7 case will begin from the moment that the debtor files his/her petition with the bankruptcy court. All petitions handled by the Project should be filed by the attorney of record with the Clerk's Office for the United States Bankruptcy Court for the District of New Jersey, Mitchell H. Cohen U.S. Courthouse, 401 Market Street, Camden, New Jersey, 08101-2067. D.N.J. LBR 1073-1. Seven years ago, electronic filing

became mandatory for all attorneys filing more than 10 pleadings per year with the court. D.N.J. LBR 5005-1. The petitions may be filed on an individual basis, or jointly on behalf of a husband and wife. 11 U.S.C. § 302(a). Under the Bankruptcy Code, the debtor's filing constitutes an order for relief. 11 U.S.C. § 301(b). The order for relief triggers the automatic stay, creates the bankruptcy estate, and commences the Chapter 7 process. Along with the petition, the debtor is required to file with the court various schedules, reflecting the debtor's assets and liabilities, current income and expenditures, all executory contracts and unexpired leases, and a statement of the debtor's financial affairs. FED.R.BANKR.P. 1007(b). The debtor may file a petition without including the necessary schedules, simply in order to commence the case and to initiate the automatic stay, but the schedules must be filed within 14 days of the filing of the petition, or the case will be dismissed. FED.R.BANKR.P. 1007(c). The creditors listed in the debtor's

schedules will receive notice of the filing of the petition from the Clerk of the Bankruptcy Court.

A person may file a petition under Chapter 7 regardless of the amount of their debts or whether they are solvent or insolvent. A person may not be a debtor, however, if during the preceding 180 days the debtor had a prior bankruptcy petition dismissed due to his/her willful failure to appear before the court or failure to comply with orders of the court. A new petition for relief will also be dismissed where the debtor's previous case was voluntarily dismissed after the debtor's secured creditors sought relief from the automatic stay to foreclose on their interest. 11 U.S.C. §§ 109(g). To maintain a valid Chapter 7 filing, the debtor must also satisfy the "means test."



### **The Means Test**

The means test was added by BAPCPA as a method of determining whether or not an individual is entitled to relief under Chapter 7, based upon their ability to pay their creditors through bankruptcy. Debtors are required to complete Bankruptcy Form B22A for means testing purposes. See Appendix at page 10. A presumption of abuse is created if the debtor's current monthly income, minus certain deductions, times 60 (based on a 5 year Chapter 13 plan) is greater than the lesser of either \$11,725 or 25% of the debtor's nonpriority unsecured creditors (or \$7,025 if greater than the 25%). 11 U.S.C. § 707(b)(2). Current monthly income is defined as the six month average of income from all sources, taxable or not, and including both spouses if it is a joint case. 11 U.S.C. § 101(10A). Median income information is provided by the census bureau. Current (2011) standards for New Jersey are \$59,060 for one earner, \$70,680 for 2 people, \$85,573 for 3 people, \$101,106 for 4 people and an additional \$7,500 for each person after 4. See the United States Trustee's website at [www.justice.gov/ust/eo/bapcpa/20110315/bci\\_data/median\\_income\\_table.htm](http://www.justice.gov/ust/eo/bapcpa/20110315/bci_data/median_income_table.htm). If the debtor's current monthly income is less than the applicable median family income, the debtor need not calculate deductions and the presumption of abuse in filing a Chapter 7 petition does not arise.

If the debtor is subject to the means test after looking at his/her monthly income, the Code provides for certain approved deductions. The IRS standards may be found at [www.irs.gov](http://www.irs.gov). See Appendix at 19. The National and Local Standards for expenses may be found at: [www.justice.gov/ust/eo/bapcpa/20110315/meanstesting.htm](http://www.justice.gov/ust/eo/bapcpa/20110315/meanstesting.htm). Local standards by state and county are provided for housing and utilities (see Appendix at page 20) and transportation expenses (see Appendix at page 21). For further discussion on means testing, see *infra* at page 34.

It is expected that for the greater majority of clients handled through the Project, the means test will not be an obstacle to filing for relief under Chapter 7.

## **Schedules**

As part of your initial interview with the debtor, you will be helping them to prepare the petition and schedules. The schedules and the questions that you will need to ask to complete them are very lengthy and time consuming. The specific questions will be discussed later in this manual and a copy of the schedules is included in the Appendix. The information included in the schedules allows the court to understand the merits of the petition and affords the creditors notice that their claim may be subject to discharge. The accuracy of the debtor's application is essential for the debtor to receive complete relief.

As part of debtor's petition, the Bankruptcy Code also requires that the debtor acknowledge by his/her signature that he/she was informed of his/her right to file under either Chapters 7, 11, 12 or 13, and that the relief available under each Chapter was explained to them. Debtor's counsel is required to sign an affidavit stating that the client was informed of the various options available. See § 342(b) Notice in Appendix at 107.

Under BAPCPA, the debtor must also file a certificate that he/she received from his/her attorney the notice required by 11 U.S.C. § 342(b); a copy of all pay stubs for the preceding 60 days; an itemized statement of net monthly income, and a statement of any reasonably anticipated increases in income or expenses expected for the upcoming year. 11 U.S.C. § 521. Pursuant to General Order, entered October 6, 2005, the debtor shall present those payment advices to the trustee at the 341 First Meeting of Creditors rather than file them with the bankruptcy court. See General Order in the Appendix at page 109. If the debtor fails to file all required schedules within 45 days of the filing of the petition, his/her case will be dismissed. If the debtor does not timely file the statement of intention as to leased property or as to secured personal property, the automatic stay will terminate as to that property. § 362(h). The debtor no longer has the option of retaining the property and continuing to make the regular scheduled payments without choosing to reaffirm or redeem. § 521(a)(6).

## **Filing Fees**

The debtor must pay a \$299 filing fee to file a Chapter 7 case. This fee includes a \$245 filing fee, a \$39 general noticing fee, and a \$15 Chapter 7 trustee's fee. The fee should be paid to the Clerk of the Court upon filing by money order, certified check, corporate check, or by attorney check or preapproved credit card. If a joint petition is filed, only one filing fee is charged. If the debtor fails to pay these fees, the case may be dismissed. 11 U.S.C. § 707(a); FED.R.BANKR.P. 1017(b). The debtor may seek, with the court's permission, to pay the fee in installments or to have the filing fee waived. 28 U.S.C. § 1930(a); FED.R.BANKR.P. 1006(b). If the fee is to be paid in installments, the petition may be filed without an initial fee, four installments are allowed, and the final installment is payable not later than 120 days after the filing of the petition. See Official Form B3A in the Appendix at page 24. The court may extend the time of any installment for cause, provided that the last installment is paid not later than 180 days after the filing of the petition. FED.R.BANKR.P. 1006(b). The debtor may also now seek to have the filing fee waived. To

do so, the debtor must file an application with the court. See Official Form B3B in the Appendix at page 26. The judge may waive the fee if the debtor's income is less than 150% of the federal poverty guideline for family size and the debtor is unable to pay in installments. See table in the Appendix at page 3.



**The  
Automatic  
Stay**

The filing of the petition “automatically stays” most actions by creditors against the debtor or the debtor’s property. 11 U.S.C. § 362. This stay arises by operation of law and does not require a hearing or other judicial action. The stay generally prevents creditors from initiating or continuing lawsuits, wage garnishments, or otherwise contacting the debtor demanding payment. The stay is designed to give the debtor a breathing spell from creditors, and is broad in scope.

It stops all collection efforts, including letters and telephone calls, all harassment, most foreclosure actions, and other administrative proceedings even if they are not before a “court”.

The automatic stay does not, however, stop all actions against the debtor’s interests. There are specific exceptions to the automatic stay as provided in § 362(b), such as: the commencement or continuation of a criminal action against the debtor; the establishment or modification of an order for alimony, maintenance or support; and an audit by the IRS to determine tax liability. Under the BAPCPA amendments, the government may use setoff of an income tax refund for a taxable period ending before the order for relief against a tax liability for a taxable period also ending prepetition. 11 U.S.C. § 362(b)(26). Where the creditor is granted in rem relief from the automatic stay under § 362(d)(4) (i.e., the court finds that the filing was part of a scheme to defraud or delay creditors that involved a transfer of property or multiple bankruptcy filings), the automatic stay will not go into effect in any subsequent case filed within 2 years of that order, except that the debtor may move for relief based on changed circumstances. § 362(b)(20). The stay will also not prevent the continuation of an eviction where the residential lessor holds a prebankruptcy judgment for possession. 11 U.S.C. § 362(b)(22). This eviction exception will be delayed for 30 days, to allow the debtor time to file a certification that he/she can cure the default and to make a deposit with the court of any monies due during that time period. 11 U.S.C. § 362(l). The debtor may also be evicted where the eviction is based on an endangerment of the property or the illegal use of controlled substances on the property. § 362(b)(23). If the debtor objects to the eviction, section 362(m) requires the debtor to respond within 15 days of the landlord’s certification. A hearing must be held within 10 days of the debtor’s objection and the burden is on the debtor to show that the conditions have been remedied.

Otherwise, the automatic stay remains in effect until either: (1) the property is no longer property of the estate, (2) the case is closed or dismissed, (3) the debtor receives or is denied a discharge, or (4) the court grants relief from the stay. The court may grant relief from the stay for cause, for lack of adequate protection, or because the debtor lacks equity in the property and it is not necessary for his relief. The stay will also terminate as to personal property where the debtor fails to timely file a statement of intention or to take timely action specified in that statement. 11 U.S.C. § 362(h). The imposition of the

stay cannot be waived by the debtor. Willful violations of the automatic stay by creditors are subject to sanctions under § 362(k).

## **The Bankruptcy Estate**

The potential debtor should understand that a Chapter 7 bankruptcy case does not involve a plan of repayment, as it does in Chapter 13, but instead is based upon the creation of a bankruptcy “estate” comprised of all of the debtor’s legal and equitable interests. 11 U.S.C. § 541. The “estate” technically becomes the temporary legal owner of all of the debtor’s property. This estate is then managed by a bankruptcy trustee appointed through the office of the United States Trustee. The Chapter 7 trustee gathers all of debtor’s assets, with the exception of property that is exempt, and in accordance with the priorities established in the Bankruptcy Code, liquidates those assets where applicable to satisfy the debtor’s creditors.

The respective rights of the debtor and the creditors under both state and federal law are taken into consideration. Creditors holding liens or mortgages on the debtor's property are considered to be “secured creditors”, and will receive a distribution of the proceeds of their collateral before other claims are paid if the collateral is in fact sold through the bankruptcy process. Creditors without a security interest are considered to be “unsecured creditors,” and share in the unencumbered property of the estate. The debtor may also retain certain property as “exempt” property. This means that it belongs to the debtor regardless of any outstanding claims, with some exceptions, that will not be satisfied by the final distribution of the estate. As part of this process, potential debtors should realize that the filing of a petition under Chapter 7 may result in the loss of some of their property.

## **Exemptions**

In New Jersey, the debtor may elect to take either the exemptions provided for under the Bankruptcy Code, or the exemptions provided for under state law or other federal law. 11 U.S.C. § 522(b). BAPCPA requires that the debtor must have been domiciled in the state for at least the 730 days prior to the date of filing in order to elect the state’s exemption laws. 11 U.S.C. § 522(b)(3). If the debtor cannot satisfy the 730 day period, the Code looks next to the place that the debtor resided for 180 days immediately preceding the 730 day period. If the debtor is ineligible for any state exemptions as a result of the domicile rules, he/she can elect to use the federal exemptions. State homestead exemptions are also now capped under BAPCPA at \$146,450. 11 U.S.C. § 522(p).

Unless the case is dismissed, property exempted under § 522 is not liable during or after the case is closed for any of the debtor’s prepetition debts, EXCEPT for nondischargeable tax obligations under § 523(a)(1), secured obligations, certain fraudulent transactions, and for alimony and support obligations protected under § 523(a)(5). 11 U.S.C. § 522(c). In other words, this is property that the debtor may retain, free and clear from his/her creditors.

The exemptions provided for under the Bankruptcy Code include for example: \$21,625 for debtor's personal residence, \$3,450 in one automobile, \$1,450 in jewelry, and \$11,525 in household goods. "Household goods" are now defined under BAPCPA (for lien avoidance purposes) to include clothing, furniture, appliances, one radio, one television, one VCR, one personal computer, linens, china, crockery, kitchenware, etc. See 11 U.S.C. § 522(f)(4). IRAs are now exempt up to \$1,171,650 under section 522(n). These exemptions are doubled for joint petitions. 11 U.S.C. § 522(m). For the complete list of federal exemptions, see the Appendix at page 31. The New Jersey state law exemptions and other federal law exemptions are listed in the Appendix at pages 33-35.

## **The Chapter 7 Trustee**

Once a party files a Chapter 7 petition, the United States Trustee will then appoint an impartial panel trustee to administer the case and liquidate the debtor's nonexempt assets. 11 U.S.C. § 701, 704. Often in individual Chapter 7 cases, the trustee will discover that all of the debtor's assets are exempt or subject to valid liens, and that there are no assets to liquidate for distribution to the unsecured creditors. These cases are referred to as "no asset" cases. In the typical no asset Chapter 7 case, there is no need for creditors to file proofs of claim because there will be no assets available for distribution. If the trustee later recovers assets, the clerk's office will notice the unsecured creditors of that fact and additional time will be designated within which to file proofs of claim.

If the debtor's case is an "asset" case, unsecured creditors have 90 days after the first date set for the 341(a) meeting of creditors within which to file their proofs of claim. FED.R.BANKR.P. 3002(c). Notice of this "bar date" is provided to all creditors by the clerk's office as part of the notice of the commencement of the case. Secured creditors are not required to file proofs of claim in Chapter 7 cases in order to preserve their security interests or liens, but there may be times when it is in their best interest to do so.

In an "asset" case, it is the responsibility of the Chapter 7 trustee to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. The trustee will focus on any property that the debtor owns free and clear of liens, and any property which holds sufficient equity value above the amount of any security interest or lien and any exemption that the debtor claims in the property. In making this determination, the trustee often factors in estimated closing costs, tax consequences and other miscellaneous expenses. The trustee also has the ability to pursue causes of action belonging to the debtor on behalf of the bankruptcy estate. The Bankruptcy Code also affords the trustee the ability to file his own or her causes of action to recover money or property under the trustee's "avoiding powers." These avoiding powers include the power to set aside "preferential transfers" made to creditors within 90 days before the petition, to void security interests and other prepetition transfers of property that were not properly perfected at the time of the petition, and the power to pursue other nonbankruptcy claims such as fraudulent conveyance actions under state law. 11 U.S.C. §§ 547, 548, 549.

Under BAPCPA, the Chapter 7 trustee is obligated to provide notice to the creditor

and an explanation of the creditor's rights if there is a domestic support obligation. 11 U.S.C. § 704(a)(10), (c). The trustee must also provide notice of the debtor's current address and employer, the debtor's discharge, any reaffirmations, and any debts excepted from discharge under § 523(a)(2), (a)(4) or (a)(14A).

### **341 Meeting of Creditors**

A "meeting of creditors" is usually scheduled to be held 20 to 40 days after the debtor files his/her petition. The debtor's attendance at this meeting is mandatory. Creditors may appear and ask questions regarding the debtor's financial affairs and property. 11 U.S.C. § 343. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting. The Chapter 7 trustee will also attend the meeting, but the judge assigned to the case will not be present. The debtor's cooperation with the trustee is essential to the efficient administration of the case. The trustee will examine the debtor at the meeting to ensure that the debtor's representations in his/her schedules are accurate, and that the debtor understands the effect of receiving a discharge and the impact of reaffirming or redeeming a debt. 11 U.S.C. § 341(d). Some trustees provide written notice of their specific questions at or prior to the meeting, to ensure that the debtor is aware of this information. For an example of these questions, see *infra* at page 38.

Under BAPCPA, the debtor must now also provide the trustee with a copy of his/her most recent year's tax return no later than 7 days prior to the 341(a) meeting. 11 U.S.C. § 521(e)(2)(A). A copy must also be provided to any creditors who request it. Pursuant to General Order, entered October 6, 2005, the debtor must also present his/her last 60 days of pay stubs to the trustee at the 341 meeting of creditors instead of filing the advices with the bankruptcy court. See Appendix at page 109.

### **Distribution**

The final distribution of the debtor's estate is governed by section 726 of the Bankruptcy Code, which sets forth the order of payment for all claims. Under section 726, there are six classes of claims, and each class must be paid in full before the next lower class is paid anything. Where there are insufficient funds to satisfy all claimants within a class, they will share the amounts available pro rata. The debtor has no control over who gets paid or what they get paid. Although the debtor does hold the sixth position for distribution, in most cases handled through the Project, there will generally be nothing left to distribute by this point. Payments are made first in the order specified in section 507. BAPCPA amended section 507 to place allowed unsecured claims for domestic support obligations in the first priority position, ahead of administrative expenses.

## Lien Avoidance

Under 11 U.S.C. § 522(f), the debtor may avoid the fixing of certain liens on his/her interest in property to the extent that the lien impairs his/her exemption. This provides the debtor with additional protection for his/her exempt property by allowing the debtor to avoid the creditor's interest if the debtor's interest in the property would have been exempt but for the creditor's lien. This determination is a simple mathematical calculation comparing the sum of the lien in question, all other liens on the property and the debtor's exemption to the debtor's interest in the property absent all liens. To the extent that the resulting number is negative, the debtor's lien is impaired, and the lien may be avoided. BAPCPA has amended section 522(f) to protect any judicial lien securing a domestic support obligation from avoidance.



### Practice Point:

In the case of a \$40,000 home with a \$40,000 mortgage, the debtor can avoid all judicial liens in any amount. In the case of a \$50,000 home, a \$40,000 mortgage and a \$10,000 homestead exemption, a \$20,000 judicial lien is avoided in its entirety. In the case of a judicial lien senior to a nonavoidable mortgage where the mortgages on the property exceed the value of the property, the lien is still avoidable.

## Discharge

In most cases, the debtor will be granted a discharge within 60 to 90 days after the date set for the first meeting of creditors. FED.R.BANKR.P. 4004(c). If one of the debtor's creditors files a complaint objecting to the discharge or the debtor files a written waiver, the debtor's discharge may be delayed. Generally, with the exception of cases which are dismissed or converted, individual Chapter 7 debtors receive a discharge in more than 99% of the cases. A discharge releases the debtor from "personal" liability for the discharged debts and prevents the creditors owed those debts from pursuing the debtor to collect. It is important to remember, however, that a discharge of the debtor's "personal" liability for a secured debt does not remove the lien against the property and does not prevent the secured creditor from pursuing its claim against the property after the bankruptcy. However, if the debt that is discharged is an unsecured claim, the creditor will have no further recourse against the debtor personally to collect the obligation.

Under the Bankruptcy Code, there are limited grounds for denying an individual debtor a discharge in a Chapter 7 case, and these are construed against the party seeking to deny the discharge. Some of the reasons for denying a discharge to a Chapter 7 debtor include that the debtor: failed to keep or produce adequate financial records; failed to explain a loss of assets; failed to obey a court order; committed a bankruptcy crime such as perjury, or the debtor fraudulently transferred, concealed, or destroyed property that would have become property of the estate. 11 U.S.C. § 727; FED.R.BANKR.P. 4005. The debtor must also have not received a previous Chapter 7 discharge within the last eight

(8) years. 11 U.S.C. § 727(a)(8). Under BAPCPA, the debtor may also be denied a discharge if he/she failed to complete a post petition personal financial management course as now required by the Code. See 11 U.S.C. § 111, 727(a)(11). The court may revoke a Chapter 7 discharge on the request of the trustee, a creditor, or the United States Trustee if the discharge was obtained through fraud by the debtor or if the debtor acquired property and knowingly and fraudulently failed to report the acquisition of, or surrender the property to, the trustee, or failed to explain a misstatement on an audit held in accordance with 28 U.S.C. § 586(f) . 11 U.S.C. § 727(d).

### **Debtor Education**

Under BAPCPA, the debtor is now required to also complete a post petition personal financial management course. 11 U.S.C. § 111. The UST's office must approve the agency used to provide the financial training. For a list of approved agencies, see the Appendix at page 36, and on the website as updated by the United States Trustee at [www.justice.gov/ust/eo/bapcpa/ccde/de\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/de_approved.htm). The course will provide information on budget development (such as setting short and long term financial goals; calculating gross and net monthly income and identifying expenses); money management (such as keeping adequate financial records; comparison shopping; maintaining appropriate insurance and saving for emergencies); use of credit (such as the different types and costs of credit and loans; debt warning signs and checking credit ratings), and on various sources of consumer information (such as public and nonprofit resources for assistance and applicable consumer protection laws and regulations). The debtor will not be granted a discharge until he/she completes such a course. 11 U.S.C. § 727(a)(11).

### **Nondischargeable Debts**

A discharge under Chapter 7 does not discharge the debtor of all debts. Certain specific types of debts, listed in section 523 of the Bankruptcy Code, are nondischargeable, including: domestic support obligations, certain taxes, student loans, debts for willful and malicious injury by the debtor to another person or property, debts for death or personal injury caused by the debtor's operation of a motor vehicle while intoxicated from alcohol or another substance, and debts for criminal restitution. 11 U.S.C. § 523(a). Consumer debts in an amount greater than \$600 for luxury goods or services incurred within 90 days, as well as cash advances aggregating more than \$875 obtained within 70 days, of the order for relief will also be presumed to be nondischargeable. 11 U.S.C. § 523(a)(2)(C). For a list of all of the types of nondischargeable debts under section 523, see the Appendix at page 39.

If these types of debts are not fully paid in the Chapter 7 case, the debtor is still personally responsible for them even after a discharge has been granted and the case closed. Generally the burden is on the debtor to prove that these debts are nondischargeable. In certain cases, however, the burden is on the creditor to timely file and pursue a determination of nondischargeability, such as where the debts are for

money or property obtained by false pretenses, by fraud or defalcation while acting in a fiduciary capacity, and by willful and malicious injury by the debtor to another person or property . 11 U.S.C. § 523(c); FED.R.BANKR.P. 4007(c).

## **Reaffirmation**

In certain circumstances, a debtor may desire to keep possession of certain property that is subject to a lien, such as an automobile. The Bankruptcy Code allows the debtor to voluntarily repay any debt at any time, even though the debtor's legal obligation to do so was discharged. Beyond voluntary repayment, the debtor may reinstate personal liability on a debt, particularly where the debt is secured by property that the debtor desires to retain. In return, the creditor promises that, as long as payments are made, the creditor will not repossess or take back the automobile or other property. Such an agreement is enforceable only if it meets all of the requirements under section 524 (c), which include that the agreement must: (1) be made before the granting of the discharge, (2) contain very specific disclosures as allowed in section 524(k), (3) be filed with the court accompanied by an affidavit reporting voluntary agreement and no undue hardship, and (4) not have been rescinded prior to discharge or within sixty days after filing. 11 U.S.C. § 524(c). Where the debtor is pro se, the court is required to hold a hearing to determine that the agreement does not impose an undue hardship on the debtor or a dependent of the debtor, and that it is in the debtor's best interest. Generally, reaffirmation agreements allow the debtor to retain possession of collateral which otherwise would be subject to repossession or surrender. It should be noted that the debtor's reaffirmation of a specific debt in one proceeding will not render that debt nondischargeable in a subsequent bankruptcy proceeding.

Under BAPCPA, if the debtor does not reaffirm personalty included in the statement of intention within 30 days after the date of the first meeting of creditors, the automatic stay as to that property will terminate. 11 U.S.C. § 362(h). A sample reaffirmation form is included in the Appendix at page 41.

## **Redemption**

The debtor may also elect to redeem certain property of the estate. Redemption is the right to retain property by paying its fair market value to the creditor holding a lien on the property in full at the time of the redemption. 11 U.S.C. § 722 This right is particularly useful where the debt exceeds the value of the collateral or asset. For example, a debtor might wish to "redeem" a car for \$500, if a debt of \$1,000 remains due on the car.

Under BAPCPA, if the debtor does not redeem personalty included in the statement of intention within 30 days after the date of the first meeting of creditors, the automatic stay as to that property will terminate. 11 U.S.C. § 362(h).

With this basic understanding of the Chapter 7 process, you are ready to prepare for the initial client interview.

### III. The Initial Interview



The initial client interview takes place at the Rutgers Law School, in the East Building, 2<sup>nd</sup> Floor at 217 N. Fifth Street and serves as a way to develop an initial rapport with the client. It allows you to gather information with respect to the client's financial situation, and provides you with a time and place to listen, advise and counsel the client. The initial meeting is an important opportunity to allow you to understand the circumstances that led the client to seek your assistance. At this stage of the process, counseling requires empathetic communication, characterized by concern, helpfulness, a desire for understanding and agreement, and a dispassionate overview. This meeting is not scheduled solely so that you can gather the information necessary to complete a bankruptcy petition. It is to allow you to understand the client's situation so that you can recommend some course of action to the client, whether it is a form of creditor workout or a bankruptcy petition.

It is important to set the client at ease. You should remember that for most clients this is a very traumatic experience. At the beginning of the initial interview, the client should be met with courtesy, consideration, and warmth as he/she enters. If there is some delay in beginning the interview, the students should feel free to introduce themselves and to try to reduce the client's general anxiety. The rooms set aside for the interview process are not large, so please limit participation in the interview process to the client, the attorney, and 1-2 students, or seek a larger room. It is important to make sure to minimize an otherwise potentially intimidating situation, by not overwhelming the clients.

Explain to the client who you are, who the others in the room are, what the purpose of the Project is, and how it is intended to apply in his or her situation. The students should be conducting the interview, with the volunteer attorney adding points as necessary. Use of one team leader also helps to provide the client with the assurance that he/she is getting competent assistance. It is best to avoid or minimize everyone taking turns asking the client questions as it may serve to either intimidate, confuse or otherwise upset the client. It may also unfairly impact upon your credibility.

Note taking and writing in general may tend to be both intimidating and distracting. It is recommended that the team determine beforehand which student will conduct the interview and which student will take notes. If the interviewing student is not taking notes, it will allow him/her the time to study the client and to adjust the interview process in response to the client's answers. Otherwise, some questions may be missed or the client may forget some details during the interview as both the questioning and

conversation slow down to accommodate the note taking. Remember, even though the interview is scheduled to last only one hour, you are not compelled to ask all of the questions within that first interview. It is appropriate for the attorney or the other student to bring up points that may have been missed or not clear from the initial questions as the one hour period nears its end. **Follow up meetings can be scheduled at a later date at either the attorney's office or at the pro bono offices with appropriate notice.**

Remember that during the interview you should try to maintain a professional demeanor by being cordial and respectful. **Be yourself!** Do not try to "act" like an attorney!! Clients are often uncomfortable and defensive in these types of situations. You should try to convey an attitude of both patience and understanding. Remember, these people are often scared and worried about both their creditors and the system in general. Try not to be judgmental, disapproving, or condescending in discussing the client's actions leading up to this interview. Your clients can read your sincerity from both your verbal and non-verbal indicators. While you cannot expect the client to trust you based on this one meeting, you can take an important step toward gaining their confidence.

When you begin the questioning process, do not immediately begin by asking the client a list of prepared questions. Allow the client the opportunity to briefly explain their situation as he/she perceives it. You can ask: "How may we help you tonight?", "What seems to be the problem that has brought you here?", "Please tell me about your problem and we can then discuss how we may be able to help." Your discussion should begin with the areas chosen by the client. Allowing the client to talk first will allow him/her to relax and reduce the chances of placing the client in a defensive posture.

This manual includes a filing checklist and a list of standard questions. It is necessary that you complete all of the items on the checklist, and ask the relevant questions from the question list. There is no one right way to approach the questions you must ask. The course of the interview will often be dictated by the rapport you establish with the client. Often his/her responses will lead you into the next question. It is important that you do not make any assumptions as to the client's answers. Do not assume that just because the client is living at or near the poverty level that he/she has no possessions, no entitlement to a trust, or is not the potential beneficiary to a life insurance policy or other inheritance. You will not know unless you ask. More importantly, do not assume that your client is stupid or uneducated. Although you should avoid getting into a mechanical reading of one question after another, to a certain degree, this is often unavoidable. Remember, the client's direct answers may also imply other indirect information. Repeating a question another way later in the interview process may help to clarify an earlier answer or to identify any gaps or inconsistencies.

Once you understand the basic facts of the client's position, you must then evaluate the alternatives available to help this particular client. The answer is not always: "we can file a Chapter 7 petition for you." There may be other non-bankruptcy remedies that are more appropriate. It is likely that the volunteer attorney will take the lead in this area of the interview. By discussing the client's alternatives, also a required part of the bankruptcy process, the client will be more focused upon their situation and may be able to offer additional information. This process will also allow the client to feel that they are

part of the team, and that you are there to help them. In discussing the client's alternatives, you may counsel the client as to the approach you feel is preferable.

If the team determines that the client should file a bankruptcy petition, they are encouraged to complete a retention agreement with the client. See sample form in the Appendix at page 99. Clients should be referred back to Legal Services, or to an appropriate lawyer referral service, if representation is declined, if there is a conflict of interest, or if a determination is made that the client is not eligible for the Project. A list of lawyer referral services and legal services agencies in each county is available in the Appendix at page 102-104.

In evaluating the information that the client provides, you must inform the client of all his/her options, and explain the advantages and disadvantages of each approach.

## **IV. Discussing the Options**

Although the clients that we will typically be interviewing will be at or near the poverty level, this does not mean that a Chapter 7 petition is always the answer to their problems. It is your job to recommend to the client an appropriate course of action to help them with their financial problems. Typically, the client is seeking relief from lawsuits, judgments, wage executions, foreclosures, or other pressure exerted by their creditors. To understand whether a Chapter 7 petition or another solution is appropriate, you must review the client's assets, debts and income. By understanding the client's financial condition and the reason that he/she is before you, you will be better able to recommend a course of action.

### **Creditor Work-Outs**

It may be more beneficial to the client to attempt a "work out" with his/her creditors rather than filing a petition in bankruptcy. Most creditors have established guidelines by which they will compromise the amount of their claim if a lump sum payment is made. Also, it may be possible to negotiate an extension of time or different payment plan options. The client could also voluntarily surrender the property in question or execute a deed in lieu of foreclosure. In making these arrangements, it is important to ensure that the client's entire debt is satisfied, and to consider any possible tax consequences of the client's actions.

Some common arrangements are noted in the table below:

<b>Creditor/ Telephone No.</b>	<b>Arrangements</b>
Verizon Financial Services:  1-888-338-9333  <a href="http://www22.verizon.com/ResidentialHelp">http://www22.verizon.com/ResidentialHelp</a> In "Search for Support" box type: "Making Payment Arrangements"	1. Schedule a different date to pay your entire past due payment, OR 2. Extended Payment Arrangement (can be done once per year depending on previous adherence to arrangements). * Balance is divided into equal payments over 2 months (if you need more than 2 months, must call Verizon to negotiate). * That amount is tacked on to future monthly bills until the remaining balance is paid in full. 3. If you are not able to pay the full past due amount in the available payment arrangement options, call to negotiate a payment for less than the full amount.
South Jersey Gas 1-800 766-9900  <a href="http://www.southjerseygas.com/108/financial_assistance.html">www.southjerseygas.com/108/financial_assistance.html</a>	Equal Payment Plan (EEP): sets up payment plan for all customers where yearly gas costs are divided into 12 equal monthly payments of the same payment amount each month regardless of the weather. * To apply: call or electronically submit form at <a href="http://www.southjerseygas.com/108/budget_plan.html">http://www.southjerseygas.com/108/budget_plan.html</a>  ** See also Appendix at 22.
Atlantic City Electric 1-800-642-3780  <a href="http://www.atlanticcityelectric.com">www.atlanticcityelectric.com</a>	1. Budget Billing: yearly gas costs are divided into 11 equal payments with the 12th month being the "settlement" payment where that month's actual energy costs and adjustments of the previous 11 months are calculated. * Requirement: account balance must be current and account must have 12 months of usage history. * To apply: electronically submit the form at <a href="https://www.atlanticcityelectric.com/home/billing/payment/budget/default.aspx">https://www.atlanticcityelectric.com/home/billing/payment/budget/default.aspx</a> 2. Extended Payment Due Date Plan: change due date to middle of the month * Requirement: must be residential customer whose main source of total household income is from government or other low-income programs. * To apply: call or electronically submit form at <a href="https://www.atlanticcityelectric.com/home/billing/payment/extended/">https://www.atlanticcityelectric.com/home/billing/payment/extended/</a> 3. Special Payment Arrangement: for those with temporary financial conditions that make it difficult to keep their accounts current. Plan will bring account up-to-date over a mutually agreeable period of time; usually 12 month-36 months (past 12 months must be approved by supervisor). * To apply: call to negotiate  ** See also Appendix at 22.
PSE&G  1-800-275-PSEG (7734)  <a href="http://www.pseg.com/home/customer_service/bill/epp.jsp">www.pseg.com/home/customer_service/bill/epp.jsp</a>	Equal Payment Plan: yearly gas costs are divided into 12 equal payments with adjustments. * Requirement: balance must be up to date with no past due balances * To apply: call or apply online ** See also Appendix at 22.

Creditor/ Telephone No.	Arrangements
Motor Vehicle Commission <a href="http://www.njmvc.gov">www.njmvc.gov</a>  Surcharge Dept. (609) 292-7500	**Installment plan to pay over time is available on a case-by-case determination. No set time frame - each case considered individually. The \$100.00 restoration fee for a lost license is still required up-front with the remaining surcharge due over a period of time (again, determined case-by-case). **Generally speaking, if the client has lost his/her license, he/she can get it back by paying 20% of total amount of surcharges due and a \$100 restoration fee, and the remaining surcharge balance over time.

### Counseling Agencies

There are also various for-profit and not-for-profit services and agencies that are available to counsel clients with financial problems. Some services are free, some charge a flat fee, and others charge a percentage of the debt. (Note that this is different from the credit counseling required under BAPCPA. The agencies listed below do not necessarily qualify for BAPCPA purposes). Some examples include:

Agency/ Telephone #	Fee	Services Provided
Consumer Credit Counseling Service of NJ Toll Free: (888) 726-3260 Fax: (973) 267-0484  <a href="http://www.cccsnj.org">www.cccsnj.org</a>	\$50.00 fee for credit counseling services  other fees on a case by case basis	**To receive credit counseling services, go to their website and follow the links to the forms specific to the type of counseling you need. Follow the instructions to complete the forms, then mail or fax them to CCCSNJ along with a voided check. Once they receive your completed forms, they will call you within 24 to 48 hours to schedule an appointment with a counselor. **CCCSNJ will negotiate with your creditors to either lower your interest rates or your monthly payment amounts. They will also arrange for you to make one payment per month to them by money order or certified check, which they will then distribute evenly among your creditors. You can begin sending your monthly payment electronically after you have successfully sent certified checks for a few months.
Novadebt (a Garden State Consumer Credit Counseling Org.) 1-800-992-4557 (main number)  <a href="http://www.novadebt.org">www.novadebt.org</a>	Amount of monthly fee for credit counseling varies based on the amt. of outstanding debt and the client's ability to pay (12% of people enrolled in the program pay a monthly fee).	Offers different types of services: (1) Credit Counseling - for individuals with unsecured debt, Novadebt will take an in-depth look at your financial situation and recommend appropriate solutions. (2) Debt Management Plan - under this plan, you submit one monthly payment to Novadebt that they disperse to your creditors. In return for this service, your creditors may agree to lower your interest rate, remove past due fees, or make other concessions. (3) Housing Counseling - pre-purchase, default/foreclosure, and Home Equity Conversion mortgage counseling. (4) Personal Financial Program - a 6-month program to help individuals develop better budgeting practices. (6) Financial Education/Outreach - agency provides an education library along with workshops and seminars.

Agency/ Telephone #	Fee	Services Provided
Consumer Credit Counseling Service of Delaware Valley  1-800-989-2227 1-215-563-5665 Fax: 1-215-563-7020  <a href="http://www.cccsdv.org">www.cccsdv.org</a>	\$50.00 initial consultation fee if you enroll in the Debt Management Program, plus a monthly fee of \$10.00 per creditor (\$50.00 maximum)	**13 offices located in Philadelphia Metro Area, including SJ **One-on-one counseling sessions with certified credit and housing counselors. **CCCSDV offers a Debt Management Program where a counselor works with your creditors to lower your payments, stop collection action and reduce or eliminate interest and fees. The program seeks to enable you to pay off your debt within five years. The program allows you to submit a monthly payment to CCCSDV, which disburses the payments to your creditors.

### Chapter 13 Considerations

It may be more appropriate for the client to file a petition under Chapter 13 of the Bankruptcy Code rather than under Chapter 7. Chapter 13 is designed to allow financially distressed debtors to repay certain of their debts in full or in part over an extended period of time, typically three to five years, during which time those creditors cannot continue with their collection efforts. Under BAPCPA, the length of the plan is now determined by the current monthly income of the debtor as measured

against the median income for a family of like size. 11 U.S.C. § 1322(d). Some common reasons for filing a Chapter 13 petition include:

- ▶ debtors have defaulted on their home mortgage and a foreclosure proceeding has been threatened or is pending
- ▶ debtors have substantial property which could be lost in a Chapter 7 liquidation
- ▶ debtors' debt may be nondischargeable under Chapter 7
- ▶ debtors have been threatened with repossession of their automobile or it has been repossessed
- ▶ debtor has lost his/her driving privileges due to outstanding motor vehicle fines or surcharges
- ▶ debtor received a discharge under Chapter 7 within the last 8 yrs

There are certain requirements that the client must satisfy in order to file a Chapter 13 petition. The client must have stable and regular income sufficient to make payments under the plan. 11 U.S.C. §§ 101(30), 109(e). The client's noncontingent, liquidated, unsecured debts must be less than \$360,475 and his/her noncontingent, liquidated, secured debts must be less than \$1,081,400. 11 U.S.C. § 109(e). The debtor must file prepetition tax returns or risk dismissal or conversion. 11 U.S.C. § 1307(e). The debtor must also have the ability to make any post petition domestic support obligation that become due, or risk dismissal or conversion of the

case. 11 U.S.C. § 1307(c)(11). This manual will not cover Chapter 13 petitions in detail, but mentions them here only as an alternative to a Chapter 7 filing.

If the team decides that the client should file a Chapter 13 petition, they must also determine whether or not the client has the “ability to pay” counsel fees through the Chapter 13 plan. What constitutes an ability to pay has not been definitively established. For purposes of this Project, this determination will be made on a case by case basis by the attorney of record. If the attorney determines that the client has the ability to pay an attorney through a Chapter 13 plan, even on a nominal basis, the client must be referred to the appropriate Lawyer Referral Service. Neither the team nor the attorney can take the case for pay or refer it to a particular attorney. See Appendix at page 50 for an example of a form letter in these cases.

### **Chapter 7 Considerations**

If you conclude that a Chapter 7 petition is the client’s best recourse, you should ensure that the client is aware of all of the disadvantages associated with filing a petition in bankruptcy. The client may have heard of the “fresh start” concept, but likely is unaware of all of the pros and cons of filing a bankruptcy petition. The client should be informed not only of the benefits of the automatic stay and the Chapter 7 discharge, but also of the negative aspects of filing. The client should be aware that:

- He/She cannot receive a discharge under Chapter 7 if he/she has previously received a discharge under Chapter 7 within the last **eight years**. 11 U.S.C. § 727(a)(8). Correspondingly, if the client does receive a discharge, he/she cannot receive another discharge of their debts under Chapter 7 for eight more years.
- The discharge only covers **pre-petition** debts, and not any ongoing or post-petition expenses such as medical costs and other debts.
- The bankruptcy filing can appear on your client’s credit record for up to ten years under the Fair Credit Reporting Act. Although there is no law preventing the client from getting credit because he/she filed for bankruptcy, this information will be available to his/her future creditors and may impact future credit applications.
- A number of debts are not dischargeable under a Chapter 7 case. For example: most taxes, domestic support obligations, criminal fines or restitution. Some secured creditors and priority creditors may possess special rights, some of which will survive the client’s bankruptcy.
- **Co-signers are not protected** by the client’s Chapter 7 filing. The client’s obligation may be discharged, but the co-signer would still be liable for the full debt.

- The client is responsible for all filing fees, unless he/she qualifies for in forma pauperis relief.
- Under 11 U.S.C. § 366, utilities have the right to request adequate assurance. Section 366(b) requires that adequate assurance be posted within **20 days** of the filing of the petition. This frequently means that your client will have to come up with a security deposit in order to retain his/her utility service.

## V. Preparing the Chapter 7 Petition

With this basic understanding of the Chapter 7 framework and as part of the initial interview, you will be asking the debtor various questions to evaluate his/her current financial condition. These questions not only help you determine the appropriate course of action to recommend to the client, but they also serve as the framework for completing the Chapter 7 petition and schedules. The following is a list/outline of suggested questions. **Remember that the order in which you ask the questions is not important, but you will need answers to all of the questions in order to complete the petition.** As explained in the interview section, **all of these questions do not need to be asked at the initial interview.** Arrangements can be made for future meetings with the client. A copy of the petition and schedules is available in the Appendix beginning at page 53.

### Petition Information

1. List the **full name of the debtor**, or the primary debtor if a joint case is to be filed.
2. What **other names** have you **used** in the last 8 years?
3. What are the **last 4 digits of your social security number**?
4. What is your **address** (no. & st., city, state, zip code, county)?
5. What is your **spouse's full name** (if a joint petition is filed)?
6. List **all other names** used by your spouse in the last 8 years.
7. What are the **last 4 digits of your spouse's social security number**?
8. What is your **spouse's address**?

9. What is your **spouse's mailing address**?
10. Has a **bankruptcy case been filed by or against you within the last 8 years**? If so, what Chapter was filed, when, where, and what was the case name and number?
11. Have you received **budget and credit counseling** during the 180 day period preceding the filing of the petition?
12. Are you in possession of any property that poses a threat of **imminent and identifiable harm to public health or safety**?
13. Have you lived in the district for the last **180 days**?
14. Does your landlord have a **judgment against you for possession** of your property? If so, do you have the ability to **cure** the default? Do you have sufficient money to deposit with the court your **rent** for the first month of your bankruptcy?

## **Schedule A - Real Property**

Do you or your spouse own any **real property (real estate, land, home, cooperative, condominium, time share, funeral plot)**? If so:

- describe the property
- where it is located
- what is your interest in the property (fee simple, tenants in common, tenants in the entirety, etc),
- date the property was acquired
- estimated value
- amount of any mortgage or lien against the property

## Schedule B - Personal Property

1. How much **cash** do you have **on you now**?
2. Do you have **any accounts (checking or savings)**, deposits, or shares in any bank or financial institution? If so, describe what you have (i.e., a checking account and account number), where such property is located (i.e., the bank's name and address), the amount of the deposit or account, or the value of the shares? Also, what name is the account, deposit, or shares registered under?
3. Do you have any **security deposits** with a landlord, telephone company, utility company, or anyone else? If so, who made the deposit, what is the amount of each deposit, what is the name and address of each holder?



### Practice Point:

**NOTE:** The following questions ask for the estimated value of property. You should explain to the debtor that you want to know how much the items would be worth if you sold them at a garage or yard sale. Also, some of the items that you need to ask about may seem unimportant or not relevant to your client. For example, you will probably assume that your client doesn't own an airplane, or that they do not own a boat. You may find, however, that they may have an old dilapidated boat up on blocks in their backyard with no motor. So rather than make assumptions, and be wrong, be sure to ask about all possible assets.

4. Do you own any **household goods and furnishings**, including **audio, video, or computer equipment**? If so, describe the items owned, where they are located and their estimated value. Household goods such as kitchen utensils and plates can be grouped together. But if it is a big ticket item (i.e., a computer, television, etc.) list the item separately.
5. Do you own any **books, pictures, art objects, antiques, stamps, coins, records, tapes, compact discs, or other collections or collectibles**? If so, describe them, list where they are located, and what they are worth.
6. How much is all of your **clothing** worth? (Remember: the value is what you would get if you placed all of your clothes in one great big box and sold that box at a garage sale, and not the price you paid to obtain them.)
7. Do you own any **furs or jewelry**? If so, identify each item, its location and value.

8. Do you own any **firearms, sports equipment, photographic equipment, or other hobby equipment**? If so, identify each item, lists its location, and value.
9. Do you own an **interest in a life insurance policy**? If so, identify each policy by policy number, owner, name of insurance company, amount of death benefit, name of beneficiaries, and the cash surrender or refund value of each policy.
10. Do you own or have an **interest in an annuity**? If so, identify each annuity by number, owner, and issuer, and list the value and terms of each annuity.
11. Do you have an interest in an **education IRA**? If so, identify each IRA and list the present value of your interest in the IRA.
12. Do you have an interest in an **IRA, ERISA, Keogh, or other retirement, pension, or profit sharing plan**? If so, identify each plan and list the present value of your interest in each plan.
13. Do you own any **stock or interests in a corporation**? If so, describe the stock or the interest and its estimated value.
14. Do you own any **interests in a partnership or joint venture**? If so, describe the interest and its estimated value.
15. Do you own any **government or corporate bonds or similar instruments**? If so, describe them and estimate their value.
16. Does anybody owe you any **accounts receivable**?
17. Are you **owed any accrued and unpaid alimony, maintenance, support, or property settlement payments**? If so, how much is owed and what is the nature of the obligation?
18. Are you **entitled to any tax refunds or other money**, the amount of which has been determined? If so, state the amount owed and the entity that owes it.
19. Do you own or have **an equitable or future interest in any property**? If so, describe each interest and list its estimated value.
20. Do you have an interest of any kind in the **estate of a deceased person, in a death benefit plan, in the death benefits in a life insurance policy, or a trust**? If so, describe each interest and list its value. Do you have any expectation of a bequest in the next six (6) months? (Under section 541, a bequest achieved after the bankruptcy filing may still be pulled into the estate.).
21. Do you have **any other contingent/unliquidated claims, including tax refunds, counterclaims and rights to setoff**? If so, describe and list its value.

22. Do you have an ownership interest in any **patents, copyrights, or other intellectual property**? If so, describe and list its value.
23. Do you have an ownership interest in any **license, franchise, or similar property**? If so, describe and list its value.
24. Do you own any interest in any **customer lists**?
25. Do you own or have an ownership interest in any **automobiles, trucks, trailers, or other vehicles or accessories**? If so, describe each vehicle or accessory, list its location, vehicle identification number, if any, and its value. (Students may want to check the N.A.D.A. or “blue book” value if the debtor can not determine its worth or simply to check if the debtor’s estimate is reasonable.)
26. Do you have an ownership interest in any **boats, motors, or accessories**? If so, describe each item, list its location, and estimate its value.
27. Do you have an ownership interest in any **aircraft or related accessories**? If so, describe each item, list its location, and estimate its value.
28. Do you own any **office equipment, office furnishings, or office supplies**? If so, describe each item or group of items, list its location, and estimate its value.
29. Do you own or have an ownership interest in any **machinery, fixtures, equipment, or supplies used in business**? If so, describe each item or group of items, list its location, and estimate its value.
30. Do you own or have an ownership interest in any **commercial inventory**? If so, describe each item or group of items, list its location, and estimate its value.
31. Do you own or have an ownership interest in any **animals**? If so, describe the animal or group of animals, list location, and estimate value.
32. Do you own or have an ownership interest in any **growing or harvested crops**? If so describe the crops and estimate its value.
33. Do you own or have an ownership interest in any **farming equipment or implements**? If so, describe each item, list its location, and estimate its value.
34. Do you **own or have an ownership interest in any farm supplies, chemicals, or feed**? If so, describe each item or group of items and estimate its value.
35. Do you own or have an ownership interest in **any other property of any kind that has not yet been discussed**? If so, describe the property, list its location, and estimate its value. If not disclosed previously, personal injury claims and/or workers' compensation causes of action can be listed here.

## Schedule C - Exempt Property

Some of the debtor's property will be considered exempt. The computer software available in the pro bono or computer offices will allow you to choose between the state and federal exemptions. Once you choose the group of exemptions you want to apply, the computer will automatically designate which property is exempt and under which section of the Code. **You will not need to ask the debtor any other additional questions to fill out this Schedule.**

You will, however, need to understand the exemptions that are available under New Jersey state law, federal law, and the Bankruptcy Code to explain to your client the best course of action and to illustrate what will happen to their assets upon filing. In most cases, the debtor will elect the federal exemptions available under the Bankruptcy Code, which are found in the Appendix at page 31. The exemptions available under New Jersey state law are listed in the table included in the Appendix at page 33. The federal law exemptions, other than those under the Bankruptcy Code, are found in the Appendix at page 35.

## Schedule D - Secured Debts

At this time, if you have not already done so, you should ask the debtor for any bills that he/she has brought with them. Below is a list of the type of questions that need to be addressed. Some of this information will be available from review of the debtor's bills.

Do any of your creditors have **liens, mortgages, or other encumbrances** against any of your property? If so:

- what is the name and address of the party to whom the debt is owed?
- what is the creditor's account number (the last 4 digits) for the debt?
- if anyone besides the debtor is liable for this debt, what is the person's name and address?
- has this debt been turned over to someone for collection? If so, to whom?
- when did debtor incur this debt (month and year)?

- what did you receive in consideration for this debt?
- does the creditor owe you a debt? (If so, can the debt be setoff?)
- is the debt contingent upon anything?
- has the final amount of the debt been determined?
- do you admit your liability for the full amount of this debt? (If not, explain)
- do you and the creditor agree on the amount of the debt? (If not, explain)
- what is the total amount of the debt?
- do you wish to reaffirm (i.e., remain liable for the debt after bankruptcy) all or any part of the debt?
- if the debt is secured by your property, do you intend to:
  - turn the property over to the creditor;
  - reaffirm the debt and retain the property;
  - claim the property as exempt and redeem it from the creditor; or
  - claim the property as exempt and contest the lien against it?
- are the payments on this debt current or delinquent?
  - If delinquent, how many payments are you behind?
  - What is the total amount of the arrearage?
- has anyone else cosigned, guaranteed, secured, or otherwise became liable for this debt? If so, list the other person's name, address, and relationship to you.

## Schedule E - Priority Unsecured Debts

1. Do you owe any debts for **domestic support obligations** to a spouse, former spouse, or child, or the parent, legal guardian or responsible relative of such child, or to a governmental unit that such claim has been assigned to?

2. Do you owe any **debts to local, state, or federal government for taxes, customs, duties, or penalties**? If so, describe each debt, list the name and address of the governmental department to whom it is owed, list the amount owed and the date that it first became due.
3. Do you have any claims against you for **death or personal injury** resulting from your operation of a motor vehicle or vessel while intoxicated?

## Schedule F - General Unsecured Debts

These are debts which do not have secured or unsecured priority status. Most of the information you will need for this schedule will be provided on the debtor's bills. The questions that you may want to ask are the same as those listed in the Secured Debt section:

- what is the name and address of the party to whom the debt is owed?
- what is the creditor's account number (at least the last 4 digits) for the debt?
- if anyone besides the debtor is liable for this debt, what is the person's name and address?
- has this debt been turned over to someone for collection?  
If so, to whom?
- when did debtor incur this debt (month and year)?
- what did you receive in consideration for this debt?
- does the creditor owe you a debt? (If so, can the debt be setoff?)
- is the debt contingent upon anything?
- has the final amount of the debt been determined?
- do you admit your liability for the full amount of this debt? (If not, explain)

- do you and the creditor agree on the amount of the debt? (If not, explain)
- what is the total amount of the debt?
- do you wish to reaffirm (i.e., remain liable for the debt after bankruptcy) all or any part of the debt?
- if the debt is secured by your property, do you intend to:
  - turn the property over to the creditor;
  - reaffirm the debt and retain the property;
  - claim the property as exempt and redeem it from the creditor; or
  - claim the property as exempt and contest the lien against it?
- are the payments on this debt current or delinquent?
  - If delinquent, how many payments are you behind?
  - What is the total amount of the arrearage?
- has anyone else cosigned, guaranteed, secured, or otherwise become liable for this debt? If so, list the other person's name, address, and relationship to you.

## **Schedule G - Existing Contracts & Leases**

Are you a party to any **contracts or leases** (e.g., an apartment rental agreement or a leased car) that are still in effect? If so, describe each contract or lease and list the name and address of all parties to each contract or lease.

## **Schedule H - Co-debtors**

If you have not yet asked about co-debtors, you should do so now.

Is anyone beside yourself liable for any of your debts? If so, which debt and what is the name and address of each person who is liable for each debt?

## **Schedule I - Current Income**

1. What is your marital status?
2. List the age and relationship of each of your dependents.
3. Are you or your spouse currently employed? Complete for both, even if the spouse is not a debtor.
  - what is your occupation?
  - list the name and address of your employer.
  - how long have you been employed by this employer?
  - what is your current monthly gross wages, salary, and commissions?
  - what is your estimated monthly overtime?
  - what deductions (e.g., payroll taxes, social security, insurance, union dues) are taken from your wages? What is the amount of the deduction?
  - what is your total net monthly take home? (If the debtor has a pay check stub with them, it may be helpful to look at the pay stub and then determine whether these questions need to be asked.)
4. Do you and/or your spouse receive any other income? If so, what is the source of such income, i.e. alimony, maintenance or support payments, social security, gov't assistance, pension or retirement (be specific)? How much do you receive per month?
5. Do you anticipate your income to increase or decrease in the next year? If so, explain.

## **Schedule J - Current Expenditures**

Most debtors are asked to make a list of their current monthly expenses, and to bring it with them to the initial interview. If you have not yet received this list, it may be helpful to ask for it now. Before you ask any of the following questions, look to see if the information is provided for on the list you received from the debtor.

Ask the client, "How much do you spend on:"

1. \$\_\_\_\_\_ Rent or home mortgage payments (include lot for mobile home)  
- are real estate taxes included? -is property insurance included?
2. \$\_\_\_\_\_ Utilities (electricity and heating fuel, water and sewer, telephone)
3. \$\_\_\_\_\_ Home maintenance (repairs and upkeep)
4. \$\_\_\_\_\_ Food? \$\_\_\_\_\_ Clothing?
5. \$\_\_\_\_\_ Laundry and dry cleaning
6. \$\_\_\_\_\_ Medical and dental expenses
7. \$\_\_\_\_\_ Transportation (not including car payments)
8. \$\_\_\_\_\_ Recreation, clubs and entertainment, newspapers, magazines, etc.
9. \$\_\_\_\_\_ Charitable contributions
10. \$\_\_\_\_\_ Insurance (not deducted from wages or included in mtge payments):  
homeowner's/renter's? life? health? auto? other?
11. \$\_\_\_\_\_ Taxes (not deducted from wages or included in mortgage payments),  
specify -
12. \$\_\_\_\_\_ Installment payments - auto? other?
13. \$\_\_\_\_\_ Alimony, maintenance, support paid to others
14. \$\_\_\_\_\_ Payments for support of additional dependents not living at your home
15. \$\_\_\_\_\_ Regular expenses from operation of business, profession or farm  
(attach detailed statement)
16. \$\_\_\_\_\_ Miscellaneous other
17. Do you expect any increase or decrease in your expenses to occur for the  
upcoming year?

## Statement of Financial Affairs Information

The Statement of Financial Affairs is an eleven (11) page document that follows Schedule J in the petition and schedules. Questions 1-18 must be completed by all debtors. Questions 19-25 are for debtors who are in or who have been in business.

1. What is the source and how much gross income have you received from your employment or business for this year, for last year, for two years ago? Your spouse's gross income for this year, for last year, for two years ago?
2. How much income have you and your spouse received over the last two years from other sources?
- 3a. For debtors with primarily consumer debt -- List the names and addresses, dates of payment, amounts paid, and amounts owing for each creditor to whom you or your spouse have paid more than \$600 in the last **90 days**.
- 3b. For debtors whose debts are not primarily consumer debts -- List the names and addresses, dates of payment, amounts paid, and amounts owing for each creditor to whom you or your spouse have paid or transferred funds to within the last **90 days** if the aggregate value of the transfers is **greater than \$5,850**.
- 3c. For all debtors -- List all payments made within the last year to **insiders**.
- 4a. List the name of the case and case number, nature of the case, court and current status of all **lawsuits** you or your spouse have been involved in as a party during the last 365 days.
- 4b. List the name and address of all creditors, the date of seizure, the owner of the property seized, and a description and value of the property seized for all money or property of your's or your spouse's that has been **attached, garnished or seized** in a court proceeding within the last 365 days.
5. List the name and address of the creditor or seller, the date of repossession, foreclosure or return, a description and value for the property, and the owner of the property for all property owned by yourself or your spouse that within the last 365 days has been **repossessed by a creditor, foreclosed upon, or otherwise returned to the seller**.
- 6a. Have you or your spouse made an **assignment for the benefit of creditors** within the last 120 days? If so, attach copies of all papers relating to the assignment.

6b. Has any of your property or your spouse's property been held by a **custodian, receiver, or other court-appointed official** during the last 365 days? Is so, attach copies of all papers relating to the proceeding.

7. List the name and address of the recipient, the relationship of the recipient to you, the date of the gift, a description and value for the gift, and the person who made the gift for all **gifts or charitable contributions** made by you or your spouse within the last 365 days, except for ordinary gifts to family members totaling less than \$200 per recipient and charitable contributions of less than \$100 per recipient.

8. List the type of loss, the property lost, the date of the loss, the amount of the loss, whether it was covered by insurance, and the person who incurred the loss for any **losses from fire, theft, or other casualty, or from gambling**, that you or your spouse have incurred during the last 365 days.

9. List the name and address of the person paid, the date of payment, the name of the person who made payment, and the amount paid or value and description of property transferred for all transfers of money or property within the last 365 days by or on behalf of you or your spouse to attorneys or other persons for **debt consolidation** or the **filing of a bankruptcy case**.

10a. List the name and address of the transferee, the relationship of the transferee to you, the date of the **transfer**, the description and value of the property transferred, and the owner of the property transferred for all other transfers of money or property made by you or your spouse within the **last 2 years**, other than property or money transferred in the ordinary course of your business or financial affairs.

10b. List all property transferred by the debtor within the **last ten years** to a self-settled trust or similar device where the debtor is the beneficiary.

11. List the name and address of each financial institutions, the name of the account, the account number and type, the amount of the current balance, and the date of any sale and amount received for all checking, savings, or other financial accounts, certificates of deposits, and shares in banks, credit unions or other financial institutions that you or your spouse have **closed**, transferred, or sold during the last 365 days.

12. List the name and address of the bank or depository, the names and addresses of all persons with access to that box or depository, a description of the contents, and the date of transfer or surrender of any **safety deposit boxes** or other boxes or depositories in which you or your spouse have kept cash, securities, or other valuables within the last 365 days.

13. Has any creditor, including a bank, made a **setoff** against a debt or deposit of you or your spouse within the last **90 days**? If so, list the name and address of the creditor and the date and amount of the setoff.

14. Do you or your spouse hold or control any property owned by another person? If so, list the name and address of the owner, describe the property, and list its value and location.
15. Have you or your spouse **moved** during the **last 3 years**? If so, give the address of each place where either of you lived during that period, the name or names used at that address, and the dates of occupancy.
16. If you lived in a community property state, commonwealth or territory within the **last eight years**, identify the name of your spouse during that time period.
- 17a. List the name and address of every site for which you received notice that you may be liable for a violation of Environmental law.
- 17b. List the name and address of every site for which you provided the government with notice of a release of Hazardous Material.
- 17c. List all judicial or administrative proceedings, including settlements or orders, involving Environmental Law to which you were a party.
18. List the names, addresses, taxpayer ID numbers, nature of the businesses and beginning and ending dates of all businesses that the debtor was an officer, director, partner, managing director, sole proprietor or self employed within the **last six years** or in which the debtor owned 5% or more of the voting or equity securities within the last six years.
- 19-25. Questions are not included here but involve a debtor who is a corporation or partnership or a debtor who is an officer, director, managing executive or 5% equity holder of a corporation, partner, sole proprietor or self employed.

## VI. Means Test Calculation

As part of BAPCPA, the debtor is required to complete the Current Monthly Income and Means Test calculations included on Form B22A found in the Appendix at page 10. Current monthly income calculates the debtor's average income over the last 6 months, including income from all sources, taxable or not (but not including social security income) plus any amount paid by an entity other than the debtor on a regular basis toward household expenses.

1. What are your monthly gross wages, salary, tips, bonuses, overtime commissions?
2. What is your income from operating a business?

3. What income do you get from rental property?
4. What interest, dividends or royalties do you get a month?
5. What is your monthly pension or retirement income (not including social security)?
6. What regular contributions do you receive from someone else toward household expenses, including child or spousal support? (This is separate from Column B if this is a joint petition).
7. Do you receive unemployment compensation? What amount?
8. Do you receive any other monthly income? Specify the source.

Your total monthly income is then multiplied by 12 and then compared to the median family income for your household size in New Jersey. See information published at [www.justice.gov/ust/](http://www.justice.gov/ust/). **If your income is less than the median income, you do not have to complete the remaining portions of the Means Test form.** If your income is greater than the median income, you must complete the remaining portions of the form. Now you must calculate the 3 different types of allowed deductions for Means Test purposes.

Subpart A. of Part V. calculates the deductions allowed under the Standards of the Internal Revenue Service. The standards are located in part in the Appendix at pages 19-23 and can also be found at the UST's website. You will need to add the following deductions based on income or family size:

1. The IRS National Standard for Allowable Living Expenses.
2. The IRS Local standard for housing and utilities, non-mortgage expenses.
3. The IRS Local standard for housing and utilities, mortgage/rent expenses.
4. The IRS Local standard for vehicle operation/public transportation expenses.
5. The IRS Local standard for transportation ownership/lease expense for up to 2 vehicles.
6. Tax expenses including all federal income, self employment, social security and Medicare taxes, and state and local taxes, other than real estate and sales taxes.
7. Other mandatory payroll deductions such as mandatory retirement contributions, union dues, etc.

8. Monthly term insurance premiums.
9. Court ordered payments, such as child support.
10. Education payments for physically or mentally challenged dependents.
11. Childcare expenses.
12. Unreimbursed healthcare expenses.
13. Cellphone, internet or other special phone services needed for the health and welfare of you or your dependents.

Additional expenses are also allowed for (1) premiums for health or disability insurance or a health savings account; (2) care given for elderly or chronically ill members of your household; (3) costs incurred for protection against family violence; (4) home energy costs in excess of the IRS Standards; (5) education costs (not to exceed \$147.92 per child) for dependent children under the age of 18; (6) additional food and clothing expenses in excess of the IRS Standards, and (7) charitable contributions. You are also able to deduct 1/60th of any amounts that are past due for secured claims, priority claims or for future payments on secured claims.

The total deductions are then subtracted from the current monthly income determined earlier to calculate your disposable income. The resulting amount is then multiplied by 60. If this amount is less than \$7,025, then a presumption of abuse does not arise (meaning that if the presumption of abuse arises, the debtor should be filing Chapter 13 instead of Chapter 7). If the amount is greater than \$11,725, a presumption of abuse does arise.

If the amount is greater than \$7,025 but less than \$11,725, you must complete the form. Now you must enter the total of your nonpriority unsecured debt (taken from Schedule F of your petition). Multiply this amount by 0.25. If your disposable income is less than this amount, the presumption does not arise. If it is greater than this amount, the presumption does arise.

## **VII. Concluding the Interview**

At the conclusion of the interview, be sure to summarize the understandings reached. At this point, you may or may not have determined the best course of action. Your client may need reassurance that he/she will be taken care of. He/She is more likely to go home feeling positive about his/her prospects of a “fresh start” if you make an effort to show him/her that you are interested in them and their case. This is often

an uneasy time for most debtors and they will be concerned about what will happen to their homes and their families. They are bound to ask a lot of questions, and seek a lot of reassurance. A list of commonly asked questions is included in the Appendix at page 93.

Clarify again the responsibilities on the client's part for either future meetings or the production of documents. Explain again the steps you will be taking on the client's behalf. In particular, be sure to explain the client's responsibility for filing fees; the extent of the pro bono nature of this representation; how to contact the team and to be informed of the status of their case; the confidential nature of the attorney-client relationship; an overview of what and when things can be expected to occur in their case; and the client's responsibility to attend certain court hearings. Remember to remind the client that he/she will need to attend the 341 meeting of creditors. An example of the general procedures followed and the questions asked by the trustee is included after this section. Remember to be patient and to be understanding. Conclude the interview on a positive note for the client.

After the interview has been completed; and the client has left, the attorney should discuss with the students the information gathered to ensure the completeness of the interview and outline what steps need to be taken next. Viewing the client interview as occurring on Day One, a time line is provided in the Appendix at page 1 as a guide to the sequence of events as they will occur in a Chapter 7 case.

A Project evaluation form is included as the last page to the Appendix. All students are asked to please complete the form and turn it in to the Pro Bono Coordinator.

## **VIII. 341(a) First Meeting of Creditors**

### **General Procedures**

The following is an example of the standard procedures involved in a section 341(a) First Meeting of Creditors. Not all of the questions listed below are asked at each first meeting. These questions and procedures are indicated here to allow you to brief your client and to be prepared for what could occur at the meeting. After the case name is called:

- A. Appearance of counsel for debtor is entered on the record.
- B. Debtor or Debtors (Husband and Wife) should state names and addresses for the record.

C. Debtors should be asked to stand so that the oath can be administered.

D. The Interim Trustee reads into the record the name of the matter and the bankruptcy number before commencing the actual examination. The petition is displayed to the Debtor or Debtors (if a joint petition has been filed), and the trustee asks the following questions:

I show you a copy of what purports to be your Petition, Schedules and Statement of Affairs filed in this proceeding.

1. Did you sign the Petition?
2. Is that your signature?
3. Does this petition contain, to the best of your knowledge, a complete list of your assets, and all of your liabilities?

E. The next question is often asked in joint petition situations:

1. Who is more familiar with your family money affairs and the content of the petition filed in these proceedings?



**Practice Point:**

The purpose of this inquiry is to conserve time during the examination by addressing questions to the spouse that claims to be more knowledgeable about the affairs of the debtors and the contents of the bankruptcy petition. By doing this, the spouse that does not initially testify can then be asked if he or she heard the questions asked of their spouse and if his or her answers would be any different than what his or her spouse stated. The spouse testifying at this time should also be asked if he or she has any property other than the property referred to in the petition and/or what his or her spouse testified about. These two questions are probably the only questions that need to be asked of a spouse that does not testify initially. Of course, the circumstances may dictate or require that the Interim Trustee make a more thorough examination of both spouses.

**General Questions**

The following questions are generally asked at a 341 Meeting, although each question is not always asked in the course of every examination.

1. Have you ever been involved in a bankruptcy proceeding before?
2. Do you own or have you any equitable interest in any real estate?  
(A) (If owned) How much did the property cost, what are the mortgages encumbering same, what do you estimate the present value of the property to be?  
(B) (If the debtor rents) Have you ever owned the property in which you live and/or is the owner of same in any way related to you?
3. How many rooms does your living quarters have?
4. Do you own furniture and appliances in your house or apartment?  
(If yes) Describe the furniture and appliances and, as best as possible, state the average age, the original cost and the present value of the same.



**Practice Point:**

Rather than have the debtor take time describing each piece of furniture, the trustee may ask a general question about whether any particular piece of furniture exceeds \$550 and/or ask about items of furniture that the trustee knows normally exceeds a \$550 purchase price. The exemption section of the petition should, if properly completed, describe the debtors' exemption requests in sufficient detail so

5. Have you made any transfer of any property whatsoever within the last 2 years?  
(If yes) What have you transferred, to whom was it transferred, what was the consideration received, and what did you do with the funds?
6. Does anyone hold property belonging to you?  
(If yes) Who holds said property and what is it?
7. Do you have a banking account, either checking or savings?  
(If yes) Which banks and what were the balances as of the date you filed your petition?
8. Does your spouse have a bank account, either checking or savings?  
(If yes) In what bank and what is the balance?
9. When you filed your petition, did you have:  
(A) any cash on hand?  
(B) any U.S. Savings Bonds?  
(C) any other stocks or bonds?  
(D) Certificates of Deposit?

- (E) a safe deposit box in your name or in anyone else's name to which you may have access?
10. At the time of the filing of your petition, were you entitled to a refund from the government for income taxes?
  11. Does anyone else owe you money?  
(If yes) Please explain in detail.
  12. Do you own an automobile?  
(If yes) What is the year, make and value; do you owe any money on it?
  13. Are you the owner of any insurance policies?  
(If yes) State the name of the company, face amount of the policy, cash surrender value, if any, and the beneficiaries thereof.
  14. Have you been engaged in any business during the last six years?  
(If yes) Where, when and what happened to the assets of said business?
  15. Are you entitled to a part of the estate of anyone who has died?  
(A) (If yes) Please explain in detail.  
(B) If you become a beneficiary of anyone's estate within six months of the date your bankruptcy petition was filed, the Trustee must be advised through your counsel of the nature and extent of the bequest and/or devise you will receive.
  16. Are you presently involved in any divorce or separation proceeding or do you anticipate that you might realize any property, cash or otherwise, as a result of a settlement agreement or decree arising out of divorce proceedings within the next six months?  
(If yes) Debtor must inform Trustee through counsel.
  17. Briefly describe what caused you to get into financial difficulty.
  18. What amounts have you paid or agreed to pay to the attorney representing you in these proceedings?  
(It is not necessary that this question be asked in every situation, however, the Interim Trustee has the responsibility of reviewing attorney fees and bringing to the attention of the UST's Office any fees that they feel are unreasonable).
  19. Do you and your spouse live together?  
(If no) Where does your spouse live?
  20. Describe your furniture. What did it cost and what is it worth now?
  21. Does anyone owe you money?  
(If yes) Is the money collectible? (If so) Why haven't you collected it?